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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,511	10/19/2001	David H. Cook	LET-101	4017
28970	7590	01/13/2005	EXAMINER	
SHAW PITTMAN IP GROUP 1650 TYSONS BOULEVARD SUITE 1300 MCLEAN, VA 22102			TAYLOR, NICHOLAS R	
		ART UNIT		PAPER NUMBER
		2141		
DATE MAILED: 01/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/047,511	COOK ET AL.
	Examiner	Art Unit
	Nicholas R Taylor	2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent-term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10/19/2001.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10/19/2001 is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09/10/2002

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

1. Claims 1-11 have been examined and are rejected.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8 and 10-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Frerichs et al. (US Patent 6,684,249.)

4. As per claim 1, Frerichs teaches a method for server side insertion of content into streaming media including the steps of

providing a streaming server, (column 3, line 66 to column 4, line 1)

associating an insertion plug-in with the streaming server, (column 4, lines 44-58)

generating a command which includes indicia for locating content desired by a user and indicia for locating a source for content to be inserted, and (column 10, lines 17-56, specifically steps 1-6)

substituting, in response to a signal associated with the content desired by the user, packets of content to be inserted for packets of the content desired by the user (column 10, lines 17-56, specifically steps 6-15.)

5. As per claim 2, Frerichs teaches the system further wherein the generated command further including indicia reflective of the user (column 9, lines 39-54.)

6. As per claim 3, Frerichs teaches a method for matching the timing of content inserted into a data stream with breaks in the data stream comprising prefetching the content to be inserted into the data stream, storing the prefetched content on a local server, (column 7, lines 41-45)

identifying a starting point for a break in the data stream, establishing an offset between the starting point of the break and an initial packet of the prefetched content, (column 6, line 67 to column 7, line 5)

removing from the data stream packets representative of the break, inserting the prefetched packets into the data stream, (column 6, lines 18-56, and the process represented by figure 3)

adjusting the time of at least one inserted packet to match the time of at least one removed packet (column 8, line 64 to column 9, line 11, wherein flags are matched to fill the insertion space.)

7. As per claim 4, Frerichs teaches the system further including adjusting the time of a plurality of inserted packets to match the time of a plurality of removed packets (column 8, line 64 to column 9, line 11, wherein multiple flags are matched to fill the insertion space.)

8. As per claim 5, Frerichs teaches the system further wherein the data stream is a live broadcast (column 4, lines 19-29, specifically a live radio broadcast.)

9. As per claim 6, Frerichs teaches the system further wherein the data stream is an on demand broadcast (column 10, lines 19-30, wherein a client selects and receives an audio stream.)

10. As per claim 7, Frerichs teaches the system further wherein the location of the content is identified by a URL (column 10, lines 31-33.)

11. As per claim 8, Frerichs teaches the system further wherein the location of the content desired by the user is defined by a network address (column 11, lines 16-19.)

12. As per claim 10, Frerichs teaches a system for inserting content into streaming media comprising

a streaming server for receiving content in the form of streaming media and passing it to a client, (column 3, line 66 to column 4, line 1)

an insertion plug-in associated with the streaming server for redirecting the streaming media and capable of recognizing an impending break in a media stream, (column 4, lines 44-58, wherein the breaks are recognized by the flags described in column 6, line 67 to column 7, line 5)

a source of content to be inserted proximate to the streaming server, (column 7, lines 41-45)

a decision server responsive to the impending break in the media stream for directing the insertion of content into the media stream for substantially the duration of the break (column 6, lines 18-56, and the process represented by figure 3.)

13. As per claim 11, Frerichs teaches the system further including a counter for identifying the number of times a universe of users sees a particular item of inserted content (column 9, lines 49-50.)

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frerichs et al. (US Patent 6,684,249) and Ikezoye et al. (US Patent 6,834,308.)

16. As per claim 9, Frerichs teaches the system above, however Frerichs fails to teach the system further wherein the location of the content is identified by an XML playlist. Ikezoye teaches the use of XML to identify content (Ikezoye, column 9, lines 33-51.)

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Frerichs and Ikezoye to provide the XML content identification of Ikezoye in the system of Frerichs, because doing so would allow additional content-related information to be presented (Ikezoye, column 2, lines 53-58.)

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This includes US Patents: 6,094,677, 6,820,277, 6,487,721, and 6,704,930. This also includes "Program insertion in real-time IP multicasts" by Brassil et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3718.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nicholas Taylor  
Examiner  
Art Unit 2141



RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER